

REMARKS**1. Status of Application**

The present application, Ser. No. 10/603,129, includes claims 23-44 and was filed on June 24, 2003. Applicant thanks the Examiner for withdrawing the rejections set forth in the June 30, 2004 Office Action. The claims have been amended as reflected in the listing of claims above. Applicant respectfully submits that the examiner's rejections contained in the June 25, 2005 Office Action have been traversed, and therefore, that the present application is in condition for allowance.

Claim 23 has been amended to remove the "multi-axis" limitation," in order to more distinctly recite the subject matter claimed by Applicant. In addition, the "polymer material" recited in claim 23 has been more precisely claimed as a "non-olefin polymer material." Claims 33 and 34 have been amended to correct matters of form; no change in claim scope is intended by these amendments. New claim 45 is added to recite non-olefin polymer materials that are elastomers.

2. Claim Rejections under 35 U.S.C. § 102(e)**a. Nishikawa**

The Examiner provided a new rejection of claim 23 based upon 35 U.S.C. § 102(e), under U.S. Patent No. 6,225,424 to Nishikawa et al. ("Nishikawa"). The Examiner stated that "Nishikawa teaches polyethylene containers (col. 1 line 9) for medical products (col. 1, line 12) made by rotationally molding (col. 7, line 35). Containers are well known in the art to be multiaxial shells with interior cavities." Applicant respectfully submits that claim 23 as

presently amended overcomes the Examiner's rejection under 35 U.S.C. § 102(e) based on Nishikawa.

As an initial matter, Applicant notes that in Claim 23, as previously presented, the claim limitation "multi-axis" modified the claim limitation "rotationally molded," not the claim limitation "shell." Thus, the term "multi-axis" in previously presented Claim 23 referred to the particular type of rotational molding recited, not the type of shell that Applicant claimed as his invention. Therefore, even if Nishikawa does teach multi-axial shells as the Examiner contends in the Office Action, Nishikawa did not anticipate Claim 23 as previously presented because it does not teach multi-axial rotational molding as expressly recited by that claim.

Moreover, Applicant respectfully submits, contrary to the Examiner's contention, that Nishikawa does not teach a "medical article" as required by Claim 23. The "medical products" disclosed at column 1, line 12 of Nishikawa and relied upon by the Examiner to support the rejection do not refer to medical articles but instead describe the "high purity chemicals" that are contained in the claimed polyethylene resin containers. Therefore, Nishikawa does not anticipate Claim 23 because it fails to teach the "medical article" limitation expressly required by that claim.

Nevertheless, Applicant respectfully submits that Claim 23, as presently amended to recite a "shell being formed of at least one layer of a non-olefin material," is not anticipated by Nishikawa. Nishikawa teaches only polyethylene containers, and it does not teach containers made of a non-olefin material. Therefore, Nishikawa does not teach an express limitation of Claim 23 as presently amended, and it does not anticipate under 35 U.S.C. § 102(e). Applicant respectfully requests that the Examiner withdraw the rejection of Claim 23.

b. Kozimor

The Examiner provided a new rejection of claim 23 based upon 35 U.S.C. § 102(e), under U.S. Patent No. 6,231,936 to Kozimor et al. (“Kozimor”). The Examiner stated that “Kozimor teaches hypodermic syringes having barrels (col. 8, lines 46-47) and test tubes (col. 8, line 54) made of polypropylene (col. 2, line 35) [u]sing rotational molding (col. 16, line 43).” Applicant respectfully submits that claim 23 as presently amended overcomes the Examiner’s rejection under 35 U.S.C. § 102(e) based on Kozimor.

Applicant respectfully submits that Claim 23, as presently amended to recite a “shell being formed of at least one layer of a non-olefin material,” is not anticipated by Kozimor. At column 1, line 7, Kozimor states that “th[e] invention relates generally to olefinic polymers” such as polypropylene. Kozimor does not disclose medical articles which have a shell made of a non-olefin material as expressly recited in Claim 23 as presently amended. Therefore, Kozimor does not anticipate Claim 23 as presently amended under 35 U.S.C. 102(e). Applicant respectfully requests that the Examiner withdraw the rejection of Claim 23.

3. Claim Rejections under 35 U.S.C. § 103(a)**a. Nishikawa**

The Examiner rejected Claims 24-38 and 44 under 35 U.S.C. § 103(a) as unpatentable over Nishikawa. Applicant respectfully submits that Claim 23 as presently amended overcomes the Examiner’s rejection under 35 U.S.C. § 103(a) based on Nishikawa.

Applicant incorporates by reference here the arguments presented above traversing the Examiner’s rejection of Claim 23 under 35 U.S.C. § 102(e) as anticipated by Nishikawa. Since Nishikawa fails to teach or suggest limitations expressly recited by Claim 23,

Nishikawa cannot render obvious the inventions recited by those claims that depend from Claim 23. Therefore, Claims 24-38, and 44, all of which depend from Claim 23, are not obvious in view of Nishikawa. Applicant respectfully requests that the Examiner withdraw the rejection of Claims 24-38, and 44.

b. Kozimor

The Examiner rejected Claims 24-38 and 44 under 35 U.S.C. § 103(a) as unpatentable over Kozimor. Applicant respectfully submits that Claim 23 as presently amended overcomes the Examiner's rejection under 35 U.S.C. § 103(a) based on Kozimor.

Applicant incorporates by reference here the arguments presented above traversing the Examiner's rejection of Claim 23 under 35 U.S.C. § 102(e) as anticipated by Kozimor. Since Kozimor fails to teach or suggest limitations expressly recited by Claim 23, Kozimor cannot render obvious the inventions recited by those claims that depend from Claim 23. Therefore, Claims 24-38, and 44, all of which depend from Claim 23, are not obvious in view of Kozimor. Applicant respectfully requests that the Examiner withdraw the rejection of Claims 24-38, and 44.

4. Allowable Subject Matter

In the June 24, 2005 Office Action, the examiner objected to Claims 39-43 as being dependent on a rejected base claim, *i.e.*, Claim 23. However, the Examiner stated that Claims 39-43 "would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." In view of Applicant's arguments regarding the Examiner's rejections of Claim 23 under 35 U.S.C. §§ 102(e) and 103(a) above,

Applicant respectfully maintains that Claim 23 as presently amended is in condition for allowance. Accordingly, Applicant respectfully requests that the Examiner withdraw the objection to Claims 39-43.

Applicant respectfully reserves the right to re-write Claims 39-43 in independent form.

CONCLUSION

It is respectfully submitted that the present application is in condition for allowance and prompt notification thereof is requested. If the prosecution of this application can be advanced by a telephone conference, the Examiner is requested to call the undersigned at (212) 530-5363.

Respectfully submitted,

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